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An Alternative Universe? Authors as Copyright Owners- the Case of the Japanese Manga Industry

by Simone Schroff¹

Abstract

Comics today are a major business and they form the source material for a whole range of sectors in the creative industries. In an environment where major investments are necessary to turn a comic into a cross-media success, commercial intermediaries such as Disney have become the key copyright holders. By controlling the copyright, they ensure full control over all aspects of its monetisation. However, this is not the only way success can be achieved on a commercial scale. In Japan, the creators of comics (Mangaka) keep their copyright- a direct contradiction to current copyright thinking. This paper addresses this conundrum by examining both the Manga business and copyright law to identify if the reasons why copyright is not centralised in the hands of the commercial intermediary, especially the publishers. The analysis will show that while there are differences between Japan and the EU/ US, but these do not affect the role of copyright law and indeed failing to acquire the rights is a choice, not a necessity. Instead, this article will highlight that the competitive Manga market in combination with the uniquely Japanese publication right and social control best explain why Mangas are successful and Mangaka keep their rights.

Key words: commercial intermediaries, Manga, copyright law, Japan, windowing strategy, business model

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Introduction

Comics are a major source material for the entertainment industries worldwide. For decades, famous US series like Batman, Spiderman or X-Men have made an impact as published books, on TV as cartoons and as feature films on the big screen.² Since the mid-1990s, Manga (Japanese comics) have added to this sector.

The success of Manga is noticeable both in the domestic and the international context. Manga are a powerhouse in the Japanese economy: they make up 20% of the whole publishing industry's income (Pineda 2017b). Indeed, Manga are so successful that they de-facto cross-subsidise other publishing activities (Brienza, 2016, 46; Schodt, 1996, 21). In addition to its domestic success, Manga are very popular abroad. The US market for example was worth \$110 mio in 2016, an increase of 29% within a year (Pinada, 2017a). Manga are also the dominant export when it comes to printed matter: 73% of all international copyright-related trade in Japanese books comes from comics in comparison to only 20% that are derived from books (Japan Publisher Association, 2018, 26). Most notably, they have overcome a major hurdle in the monetisation of comics: the distinct distribution system. For example, most US comics are still sold via specialist comic stores rather than general bookstores,³ obviously restricting their potential audience.⁴ Manga, on the other hand, have managed to break into the normal distribution chain for trade books in the US and in Europe (Brienza, 2016). As a result, they are sold in high street bookstores, broadening their access to the audience. Overall therefore, Manga is big business both in Japan and abroad.

Copyright is a key feature in the monetisation of comics. This article examines a key difference in how copyright arrangements support turning comics into revenue streams

² Disney's approach to the Marvel comics is a prime example of how coordinated the cross-media appeal of comics can be exploited.

³ \$570 mio in comic stores v \$405 mio in general book retail stores. (Comichron, 2016)

⁴ The digital sales component is insignificant in comparison with only \$90 mio. (Comichron, 2016)
<http://www.comichron.com/yearlycomicssales/industrywide/2016-industrywide.html>

between Japan on one hand and the US and Europe on the other. In particular, it addresses the question of copyright control by commercial intermediaries, here the publisher of comics.

Creative Works and Revenues: the Role of Copyright in the Windowing Strategies

Turning creative works such as comics into revenue streams is based on the well-known ‘windowing’ strategy. In this strategy, a creative work reaches the market in different versions aimed at distinct sectors of the customer base (for a structural explanation, see: Landes and Posner, 2003). In the traditional Western windowing strategy, the highest value customers, meaning those individuals willing to pay the most to enjoy a work, are targeted first. Those consumers who are willing to pay less are then addressed one by one as time proceeds.

The strategy can be best illustrated using a feature film release. The exploitation cycle starts with a cinema release where customers pay for the right to watch a film once. A few months later, the film becomes available on DVD, allowing customers to watch it as often as they wish. It is then followed by pay-per-view, streaming and finally a TV broadcast. At each step, the cost to the consumer declines but he has to wait longer and has to accept inconveniences, such as when he can watch it or commercials. In other words, the windowing strategy moves down the spectrum from the highest to the lowest value consumers using time to separate out the different market segments.

Finally, the windowing strategy is not only about the medium in which the work is issued but also versioning across different media types. If a work is exceptionally successful, it will branch out into other exploitation cycles on a large scale.⁵ For example, a successful book is adapted into a feature film, comics, a TV series and a whole variety of different merchandise.

⁵ The two most famous examples here are probably Star Wars (starting point: film) and Harry Potter (starting point: book).

The windowing strategy is also commonly used in the case of comics. Here, a series is first published as a comic book. Once it has proved popular, cartoons are made and broadcast on TV or streamed, allowing the work to reach a wider audience and generate income from licensing and advertisement. In addition, merchandise expands the income base even further as popular characters appear on all kinds of items, from pens to book bags. The most popular series are then adapted into feature films- launching the film exploitation cycle in addition to comic one. The same is the case if video games or other derivative works are made: each one launches its own exploitation cycle. This strategy was in the past used for major series including Spiderman, Batman and the different Marvel comics.

For this model to work, copyright law is essential. In principle, creative works such as literary works, comics or films benefit from copyright protection. Copyright law is important because it prevents unauthorised parties from bringing competing products to the market. In this context, it prohibits third parties to copy the work, showing it to the public or to make other works based on it (derivative works) without the permission of the right holder (exclusive rights). It therefore provides exclusivity for the right holder. Under copyright law, the rights in the work rest with the author, meaning whoever has created the work in the first place.⁶ Nonetheless, reaching a work's full potential in today's markets with all the different ways to monetise a work requires extensive resources such as expertise and capital.⁷ Most individual authors lack these resources and therefore rely a partner to bring their works into the market, such as publishers, labels and film producers (so-called commercial intermediaries). Given the often substantial investments involved in these endeavours, intermediaries seek full control over the work to ensure that they have all the available tools

⁶ There are certain limited circumstances when this rule does not apply. The relevant ones are discussed below.

⁷ This is the idea of the value chain. For a discussion in the publishing, especially the comic and Manga context, please see: (Brienza, 2016, p. 30-31).

to minimise interference and earn as much return on their investment as possible (Landes and Posner, 2003; Barnett, 2013).

These considerations are addressed in the rules on copyright ownership and transfer. In principle, the author as the creator is the copyright owner and therefore controls the work. However, copyright law recognises two broad mechanisms that provide the commercial intermediary with the exclusive rights copyright provides, giving him the control necessary to safeguard his interests and especially his investment (Gill and Balkwill, 2011; Thompson, 2012). First, if a work is made by an employee in the course of his duties, the employer is often considered the author or at least the right holder in the US, Japan and in most EU countries.⁸ However, these circumstances remain narrowly defined and a significant proportion (if not the majority) of creative works are not covered by these rules. If there is no employment relationship, then the author remains by default the copyright owner which explains the second key mechanism. Exclusive rights and therefore the economically relevant uses are transferable, meaning the author can assign his rights to another person, including a company. In this situation, the author is still recognised as the creator of the work but the commercial intermediary decides how the copyright is used and therefore also how the work is monetised.

Copyright ownership by commercial intermediaries has become a core feature of the contents sectors in the West.⁹ In the comic sector as well, most authors assign at least some of their rights to a commercial intermediary outright, such as the right to reproduce and distribute a work to the publisher (Gill and Balkwill, 2011; Thompson, 2012; Davis, 2016, 180). For example, when Disney started to turn the Marvel comics into cross-media

⁸ There is a lot of variation in this respect. For example while both the Netherlands and the US consider the employer the author under certain circumstances, a legal entity cannot be an author under German law. Instead, exclusive rights cannot be assigned to it but the actual author is at all times the individual who has created the work.

⁹ In the comics business, the most successful Western actor is undoubtedly Disney which bought Marvel Comics, including the relevant copyrights. It exercises full control over all aspects of the franchises.

properties, it acquired the full copyright to ensure that it can administer all aspects of the windowing strategy.¹⁰ Disney is therefore in control over all commercial decisions and as a result in the best position to earn the highest returns on its investment.

On the surface, the Japanese Manga market looks the same as comic publishing in Western countries. Manga are monetised using a windowing strategy (Ingulsrud and Allen, 2009, 3; Schodt, 1996, 20) which in turn is based on Japanese copyright law. However, there is one major difference between US/ EU and Japanese comics. The Japanese Manga market is a mature market where the successful exploitation of creative works is not based on the ex-ante assignment of copyright or its exclusive rights. Instead, Manga artists (Mangaka) commonly keep their copyright and continue to influence the exploitation of their work, including when their work is adapted into other media, merchandise and translations (Brienza, 2010, 44). As a result, Japanese comic publishers or other commercial intermediaries do not have the same level of control as their western counterparts have because they do not own the copyright in the underlying Manga. This setup is therefore a direct contradiction to what is generally presumed an efficient exploitation of creative works requires. This difference is even more striking given that the Japanese copyright is very similar to the EU and US law and has shaped the creative industries for over 100 years.¹¹

Shedding light on how and why the Mangaka remains so central can therefore hold important lessons for the creative industries in the US and EU more broadly. In particular, there has been a lot of debate about the dominance of commercial intermediaries and their

¹⁰ Here, Disney acquired the copyrights when it bought Marvel which itself had already successfully transferred the rights from the individual authors to the company.

¹¹ First, Japanese copyright law is modelled on the German and French ones and indeed the reasoning and the design of provisions is similar to Western copyright law. Actually, the difference between Japanese and EU law is not larger than between EU and US law. Furthermore, Japanese copyright is not a recent addition. Manga like the other creative sectors has developed under the copyright- umbrella. The first Japanese Copyright Law is from 1899 and Japan has been a member of the multilateral Berne Convention since 1901.

‘exploitation’ of the author has been subject to strong criticism.¹² Given the central role of the author in the Japanese business model, an in-depth analysis can therefore shed light on the debates in US and EU copyright law, especially the presumption that only centralised copyright ownership by commercial intermediaries can make commercial exploitation a success. The Japanese Manga case study is ideal in this context because, as mentioned above, Japan shares the European and American understanding of copyright in terms of its aims, legal design and practical role.

In this article, two different explanations will be examined for the lack of copyright control by the commercial intermediaries’ active in the monetisation of Manga. First, the business model will be analysed, focusing on if there are differences to the US/ EU windowing model which make copyright control unnecessary. Secondly, the copyright law itself will be examined to see if the commercial intermediaries are blocked from copyright ownership, either by default or accidentally as a result of how the law is designed. The article will show that while the windowing strategy used for Mangas does differ from its US or EU counterparts, this does not affect the role of copyright in it. In addition, the article will also clarify that publishers in particular could get copyright control if they wanted to. However, the article concludes that copyright ownership is not actually in the interest of the publisher from a commercial point of view because he has two alternatives which together prove sufficient: the publication right and social control.

The Manga Business Model: the Core Role of Copyright Law

This part focuses on how the Manga business in Japan works in practice. In doing so, it will examine the individual stages from a windowing-strategy point of view. This means

¹² For a good overview of the different issues and how their relationship to copyright, see Barnett (2013).

that both the order of releases as well as their target audiences and customer spending will be analysed. The discussion will first centre on Mangas as comics and then later move to cross-media licensing and merchandising. Furthermore, this section will also clarify where, when and how copyright law supports the model and any gaps there may be. It will conclude with a discussion addressing if the business model setup and strategy explains why Mangaka do not assign their copyright.

Manga as a Comic

The first level of monetisation focuses on the Manga as a comic. Mangas are first published as part of magazines which combine chapters from several different series aimed at the same target audience into one. Overall, a magazine has about 400 pages, making them 8x as large as their US or EU counterparts. Famous examples include Shounen Jump aimed at teenage boys or Nakayoshi for primary school- age girls. When a magazine sells well, the intervals tend to be shortened or the magazine diversifies to target the intended audience more precisely (Schodt, 1996, 96).

The familiar windowing strategy moves the highest-value customer to the lowest and therefore the magazines should be aimed at the customers willing to pay the most. One would as a result expect high quality editions targeting fans, making the first editions in particular highly collectible.¹³ However, this is not the case: Manga magazines are cheap, using economies of scale, low quality and recycled paper as well as monochrome printing to keep the cost down (Schodt, 1996, 22-23). For example, the weekly Shonen Jump magazine costs only 240 Yen (~\$2,20) for a 400 page product. Therefore, Mangas an everyday product and not produced to collector's standards.¹⁴ Unsurprisingly therefore, the magazines are not

¹³ This is essentially what the US and EU comic market looks like where comics are produced in good quality and especially first editions of successful series are collectibles, demanding very high prices. It is not uncommon to still find mint- quality first editions which were sealed when they were bought and never read as to not reduce their value as a collectible.

¹⁴ There is no collector's market in the same way as we it exists in the US and EU. (Schodt, 1996, 23).

considered collectable or indeed intended to be kept by the reader (Ingulsrud and Allen, 2009, 3).

It is obvious from the setup that Manga magazines are not primarily sold to make a profit and can even be a loss-making endeavour (Brienza, 2016, 45). On one hand, this is result of the highly competitive market within which Manga operate, characterised by a large variety of different magazines to choose from (Wong, 2010, 336). As a mature market, the domestic Manga market sustains a large variety genres and niches in the form of weekly, bi-weekly, monthly, bi-monthly and quarterly magazines (Lee, 2009, 1013; Wong, 2010, 336). As a result, magazines are available for every taste ranging from romantic to comedy, horror and adult.¹⁵ Furthermore, magazines are under pressure as the scope of childrens' entertainment has widened: kids are watching more Anime and video games have risen in importance (Schodt, 1996, 87). As a result, there is little scope for publishers to increase prices. It has even been argued that the market is sustained by the low cost of Manga (Bouissou et al, 2010, 262). On the other hand, the lack of profit motive is clear from the magazine content: magazines contain hardly any advertisement and if they do, it is for the publisher's own products (Brienza, 2016, 45).

Instead of making a profit, Manga magazines' main purpose is to act as advertising windows. As mentioned above, magazines combine chapters from different series into one edition. Some of these are well-known and popular while others are less popular or new. This constitutes a bundling strategy and has two major advantages for the publisher in the Manga context. First, it allows the publisher to price the magazine to the consumer's average willingness to pay as different stories vary in their popularity with the reader (Mehra, 2003, 203). Even if the reader is less fond of some material included in the magazine, he will still

¹⁵ The diversity in genres aimed at children and adults is indeed often cited as a competitive advantage, see for example Matsui [2009, 9].

buy it as part of a bundle with material he wants while he would not buy the less popular series on its own. In other words, the price of less popular series is pulled up by the popular series, giving the publisher the opportunity to spread the risk.

Secondly, it introduces the reader to new material and therefore gives the new material the required exposure necessary to become a success (Condry, 2013, 107). This effect is enhanced by the nature of the magazine: they target a particular type of audience which means that the new material is read by the most likely customer to become a fan. In other words, magazines are used by publishers to expose readers to new materials and therefore catch their attention and stimulate future purchases (Mehra, 2003, 204). Overall, Manga magazines are essentially the testing ground, identifying the most valuable properties which will sell well and create a loyal fan base while at the same time mitigating the risk of new material. Magazines therefore lay the foundation for the second market component: profits are made with the Manga collection volumes of the popular series (Brienza, 2016, 45).

Once a Manga proves popular in a magazine, it is commonly reprinted as a collection. A collection is a separate comic book which contains three to six chapters from a single series, reaching roughly 200-300 pages.¹⁶ By republishing the serialised chapters into a single volume, the publishers are using the price discrimination strategy of versioning. It allows them to target fans of a particular series directly. Most notably, it is known that publishers amend or alter the story for the reprints and hardbound copies for aficionados are also published (Mehra, 2003, 204). All of these are intended to have fans own multiple versions of the same series (Mehra, 2003, 204- 205). There is as a result no collector's market in Manga in the same way as it exists in the EU and especially the US because Manga are printed in large volumes and remain in print in their collection editions (Schodt, 1996, 23). The

¹⁶ For long running, successful series the collection can spread into many volumes. For example, Dokaben has by now reached 203 volumes and Golgo 13 is at 188 volumes. Both series are still on-going. More common levels are between 10 to 20 though.

business model is therefore not based on scarcity value but instead on large scale distribution. The strategy is definitely successful. The market for collections has expanded and now exceeds the income derived from weekly magazines (Ingulsrud and Allen, 2009, 4).

In conclusion, the Japanese Manga market is made up of two overlapping and intrinsically linked sectors. Magazines aim at a subsection of the Manga readership defined by the genre and age of the reader while the collections target the fans of a specific series. The strategy therefore moves from the general audience to the more specific one. This differs from the way the windowing strategy works in the US and the EU. First, there is no Western equivalent for the advertisement component that the magazines represent, at least not on this scale. Secondly, rather than targeting collectors as a tool for creating scarcity value, both sectors are aimed at large-scale distribution. Although there are differences in the individual steps of the windowing strategy, the question remains how copyright fits into this.

The role of copyright in the Manga market

Japanese copyright law provides for all the core components required for a successful windowing strategy. Mangas (and indeed all comics) benefit from copyright protection in Japan (Kato, 2013, 122). The comic's art work is protected as an artistic work (Japanese Copyright Act art. 10(1)(iv)) while the text is also considered a literature work (Japanese Copyright Act art. 10(1)(i)). They therefore benefit from the kind of exclusive rights commonly found in US and the EU. These include the reproduction and distribution of work in physical and digital form, rental as well as different kinds of performances (Japanese Copyright Act, art. 21ff). As a result, copyright prevents that competing products enter the market, both in the analogue and the digital form. However, the degree of copyright control differs between the two distribution methods.

The analogue distribution of Manga: the role of copyright in a leaky model

The sale of tangible copies can be roughly divided into two distinct sections: the primary and the secondary market. In the primary market, Manga are distributed in much the same way as trade books are. They are widely available in bookstores and especially popular magazines and collections are also sold in convenience stores, supermarkets and at train stations. It should be noted though that magazines and collections cannot be subscribed to (Brienza, 2016, 45). In other words, if a reader wants to have a physical copy, he needs to buy it in person or buy it online and have it delivered.

The publishers are able to control the primary market under copyright law. Distributing a work in analogue form (here the serialised magazine or the collection) relies on two exclusive rights provided under copyright law. First, there is the right to reproduce a work under article 21. Just like in the Western traditions, it covers any kind of copying in the work including its components. Secondly, the distribution of physical copies is subject to article 26bis which gives the author the exclusive right to control the transfer of the ownership of physical copies. This means that the author has the right to control the distribution of his work in a tangible form, here the sale as printed versions. Japanese copyright law therefore prevents third parties from legally marketing printed copies of the Manga without permission. In addition to copyright, this part of the business model is also supported by the Japanese Retail Price Management system (RPM). Under this system, the price at which the product is sold is set by the publisher (Mehra, 2003, 206). As a result, a retailer cannot rebate works to enhance sales or for promotional purposes without permission. Equally important, unsold copies are returned to the publisher and therefore do not enter the secondary market (Japan Publisher Association, 2018, 9-13). Overall, the combination of copyright law and RPM ensure that publishers decide who sells their products at which price, giving them absolute control over the primary market.

However, while the first market is publisher controlled, the secondary market is not. In Japan, just like in the EU or US, the rights in a printed work are exhausted after the first (legal) sale (exhaustion principle or first sale doctrine) (Japanese Copyright Act, art. 26bis(2)(i)). As a result, Manga in tangible form can be shared or re-sold by the customer. From a publisher's point of view, a flourishing secondary market can affect the primary market, especially limiting their ability to target consumers effectively. Unsurprisingly therefore, the effects of exhaustion principle have triggered a publisher response.

The first issue is the sharing of Manga magazines and collections. Under the first sale doctrine, a buyer is free to share his copy with others. On one hand, reading Manga is essentially a social experience and Mangas are shared between friends and family. On the other hand, there is also sharing via third parties. While public libraries in Europe have Mangas in their stock to attract young readers, Japanese public libraries do not. However, one major channel through which Manga are accessed are Manga cafés (Ingulsrud and Allen, 2009, 4). These are essentially cafés but with the added benefits of providing hundreds of Manga for their patrons to read for free. Since neither copyright nor the RPM system prevent this, right holders had to address this particular phenomenon in a different way. In particular, many magazines and collections offer freebies, like small toys or stickers. These are not available in the secondary distribution channels and are designed to encourage readers to buy the product regularly as well as reduce the sharing between friends and family (Schodt, 1996, 94). However, they do not prevent sharing as a whole.

In addition to sharing, the secondary market includes the re-selling of Mangas, indeed any copyright work in its tangible form. In principle, re-selling is only a major concern for the windowing strategy and price discrimination if customers can arbitrate effectively among each other (Mehra, 2003, 206). This requires some kind of platform where books can be offered and bought on a large scale. In the US and EU, Amazon's Market Place offers such a

service although it has not reached the scale where it affects prices in the first market. In Japan however, such an arbitration system has been available since the 1990s in the form of ‘new second-hand’ book store chains such as the omnipresent Book- Off. They are well known, have a wide selection of recently published books, clear pricing formulas and are easily accessible through a wide range of local stores.¹⁷ As a result, a well-established and flourishing re-sell market exists in Japan for tangible books.

The sale of new Manga in particular has been affected by the spread of used- books stores. Rather than buying items on the first market, some readers will wait until the series becomes available second-hand for a significantly lower price (Mehra, 2003, 207). Indeed, the threat to revenue has evoked major reactions by authors (Mehra, 2003, 187). There was for example a large-scale, coordinated public campaign where authors took out newspaper ads to appeal to their fans to not use second-hand stores for moral justice reasons (Mehra, 2003, 218). However, the overall impact of these used bookstores is not this one-dimensional. Mehra (2003, 212) for example argues that Book-Off has enhanced overall sales, not reduced them. In particular, knowing that there is a viable secondary market should also affect the willingness of buyers in the first market to pay more because they know they can get money for it. In addition, it should be noted though that while the first sale doctrine cannot be overridden by contract, it only applies if the re-selling is limited to everyday quantities and scope (Kato, 2013, 205). In other words, copyright law prevents a trader like Book-Off from buying large quantities directly in the primary market and then re-reselling them at a lower price.¹⁸ It is therefore not a route to deviate from the copyright or RPM system as it leaves the normal distribution channels intact (Kato, 2013, 203). Nonetheless, the effect of the first sale doctrine and therefore restraining the secondary market remains a viable business concern.

¹⁷ For a detailed discussion, see Mehra [2003].

¹⁸ In addition to being illegal, this would also not be viable in terms of a business model.

The sharing and especially the re-selling of Mangas is a core component of how Mangas are consumed, flourishing in the realm beyond copyright, RPM and therefore publisher control. As a result, the analogue part of the business model is and has been leaky for decades as customers have become used to accessing works at significantly reduced prices in the secondary market. While the copyright (and for some EU countries the RPM system) are the same, the effect the exhaustion doctrine develops in practice is significantly stronger in Japan compared to the US or the EU.

Digital to the rescue: plugging the hole of the analogue model

The second and increasingly important distribution channel is the sale of Mangas online. In the context of digital distribution, copyright provides exclusivity via the reproduction right (Japanese Copyright Act, art. 21) and the right of public transmission (Japanese Copyright Act, art. 23). In general, the Japanese youth especially seems to prefer digital over print media (Ingulsrud and Allen, 2009, 2), leading to an increase in digital ways to consume Manga.¹⁹ In general, there is little financial gain for the consumer in choosing digital versions. For example, the digital edition of the very popular Nakayoshi magazine is only 40 Yen cheaper than the print version (540 Yen rather than 580 Yen), however, the freebies are obviously not available in the digital version. The differences are also not substantial in the case of collections.²⁰ One key aspect here is the advertisement-based model. In particular, many Manga (or at least some of their chapters) are indeed offered for free by the publishers whereby the income is generated by advertisements rather than sales (Japan Publisher Association, 2018, 24).

¹⁹ E-comics accounted for 77% of all ebook sales in 2015. (Japan Publisher Association, 2018, 21).

²⁰ For example, the kindle version of the new Card Captor Sakura story is only 30 Yen cheaper than the printed version, according to amazon. The same applies to older storylines, by now 20 years old. The old books have been re-issued as ebooks over the last years. Interestingly enough, their price is higher than the price for the new ones (540 Yen rather than 460).

However, the digital distribution is hampered by a lack of industry wide coordination because the market remains highly fragmented. Magazines and collections are available in digital version via common online portals, such as Amazon's Kindle Store and Apple Books. However, there is not one platform that would allow a reader access to all his favourite magazines or series. For example, the famous Shonen Jump is not digitally available via Amazon but it is available on the cell phone via the normal Google Play store or Apple store and it is possible to access digital series via individual apps listed on the homepage. Similar apps exist for other magazines and publishers. Indeed, one major way to access digital Manga is the cell phone Manga where the latest magazine or collection can be read on the cell phone, with special adjustments to the small screen size (Ingulsrud and Allen, 2009, 2).

Since there are no all-encompassing platforms and most digital access happens via specialised apps, the customer has to know what he is looking for because there is little opportunity for chance discoveries. In this context, it should also be noted that it is the Manga magazine or the author who has the reputation, not the publisher (Mehra, 2003, 199). As a result, even if a publisher would permit access to all its properties via one app, making customers choose the publisher app over the magazine specific one is an uphill struggle. A recommendation model to stimulate sales along the lines of Amazon's and Apple's is not possible in this fragmented environment.

Despite the fragmented market and issues in reaching customers with new products, the digital distribution of Mangas has a direct benefit for right holders: it forecloses the secondary market. As mentioned above, the distribution of ebooks is considered a public transmission subject to (Japanese Copyright Act, art. 23) and not a traditional sale under the transfer right (Japanese Copyright Act, art. 26bis). As it stands now, the exhaustion principle under art. 26(2) focuses on physical copies of all works except film works. Ebooks therefore

are not subject to exhaustion and cannot currently be resold or shared in the same way as tangible copies can. As a result, copyright prevents a secondary market in ebooks, providing right holders with a degree of control over their product not seen in decades. While this point has not been tested in court yet, even if ebooks were subject to the exhaustion principle, copyright law provides another solution.

Japanese copyright law, just like the US and EU ones, provides protection for Digital Rights Management systems (DRM)- their circumvention is in itself copyright infringement (Japanese Copyright Act, art. 120bis). This is important because ebooks cannot be copied or indeed resold if they are subject to DRM- independent of the exhaustion principle. Indeed, de-facto all Manga outlets use DRM either via the established systems such as the Kindle or by offering their own controlled environment via apps and special browsers. These have the effect of closing down the secondary market as the user is not able to legally extract the copies from the system for resale and there are no re-selling options within the environment.

In addition, the inherent threat of digital distribution is limited. Digital distribution is usually portrayed as a threat to business models because once a work becomes available in digital form, it will spread quickly and uncontrollably. Online piracy in particular is seen to cause extensive harm. However, in the context of Manga, it should be kept in mind that legal access is cheap. Manga collections and magazines cost only a fraction of the price that are charged in the US or EU.²¹ As a result, the costs associated with 1) scanning an analogue version (dozens of pages for a single chapter); or 2) the effort involved in breaking the DRM; as well as the 3) severity of Japanese copyright sanctions all together make piracy more costly than the benefits associated with saving 300 Yen. In addition, Japanese copyright law has adopted a very practical way to identifying an infringer online. As Kato (2013, 193) points out, the Japanese law focuses on who introduced a work to the network and therefore

²¹ A Manga in Germany for example cost usually 10€ (= \$ 15); the US ones are priced around \$10 while the Japanese ones are only \$2-3.

there is no need to trace who has sent what across the Internet when. In this sense, the Japanese version of the right is clearer than the US or EU equivalent,²² potentially facilitating its enforcement in practice. In practice, while some online piracy exists and enforcement action is taken (Association of Copyright for Computer Software, 2018), it is not a widespread issue: it does not even feature in the public debate.²³

In summary, the copyright context for the digital distribution of Manga in Japan is uniquely supportive of monetisation. While piracy is limited, copyright law provides for far greater control in the digital context than it does for analogue works (Perzanowski, 2016). Japanese Manga publishers seem to have embraced the opportunities it offers. Indeed, the strong reliance on DRM protected apps and stores in combination with the status of ebooks as excluded from the exhaustion doctrine have closed the gap so prevalent in the analogue market: the sharing and re-selling of works. However, one key issue remains in the absence of large scale platform and therefore the opportunity to steer existing customers to new works is more limited than it could be.

Conclusion

This section focused on monetising Manga as comics, in printed and digital form. It is clear from the discussion that the actual windowing strategy differs from the Western understanding. Rather than moving from the highest- value customer down the spectrum, Manga publishers' target low to medium customers first and the higher value fans secondly. The role of copyright in separating the market into segments however is the same as in the EU or US. Copyright prevents rival products from entering the market or being distributed without the right holder's permission on a large scale when they first enter the market. It

²² The EU debate on the meaning of 'public' illustrates the difficulties encountered in this context. For an overview, see: Rosati (2017).

²³ On one hand, the case of Manga is not noticeably discussed either as part of legislative proposals/ hearings. This probably also explains why only music and film works benefit from criminal sanctions for illegal downloading while comic does not. And this is despite the government's on-going emphasis on Manga as part of its Cool Japan strategy.

should be noted though that the right holders' prerogative is limited. The strongly developed secondary market for printed books and comics in particular has reduced control over how works are bought and sold. In comparison to this, the digital distribution is entirely under right holder control. In particular, the legal environment coupled with cheap legal alternatives seems to limit piracy to such an extent that it does hardly feature in the public debate.

Cross-media Licensing and Merchandise

In addition to monetising the Manga as a comic, the business model has a second, more lucrative pillar: cross- media licensing. Manga as a medium is quintessentially character-driven, focusing on the character development rather than the art work as such (Davis, 2016, 63-65; Manga Information Office, 2018). Manga are therefore especially well-suited for cross- media exploitation because the characters can tie all of these different products together. This potential has been clearly recognised for decades and today, successful Manga give rise to spin-offs as distinct media products with their own business strategies such as Anime, light novels, dramas, movies and video games; as well as merchandise for example toys, costumes (Ingulsrud and Allen, 2009, 3; Schodt, 1996, 21). All of these have to be licensed by the right holder and therefore every single one is a revenue source. However, only successful Manga enter this second stage of the business model. In other words: the highly competitive Manga market is the try-out platform for success before more expensive forms of entertainment, such as Anime and live actions shows, are made (Davis, 2016, 109). As a result, the publisher, editor and Mangaka focus on making on the Manga as such a success. Cross-media licensing does not play a role at these early stages (Davis, 2016, 186).

Licensing Adaptations: between Revenue Streams and Fandom

Once the Manga has achieved the necessary acclaim, the roll-out across the different types of media is highly coordinated to meet consumer demand and generate as much revenues as possible. A successful Manga is first turned into an Anime (usually for TV broadcasting).²⁴ However, making an Anime is more expensive and therefore economically riskier than producing a Manga. On one hand, this has led to the very limited production budgets and cost-saving measures for which Anime production is (in)famous (Condry, 2013, especially 105). On the other hand, the financial risk is mitigated by bundling resources. The most promising way to turn popularity into revenue streams is to bring products to the market quickly and coordinate their timing in respect to each other to ensure they enforce each other's popularity and fandom more generally. However, such a large-scale roll-out requires expertise in many different sectors and a substantial upfront investment of resources. While big multimedia companies like Disney have the skill and money to successfully carry out a coordinated roll-out for its feature films for example, Western TV cartoon productions do not have these kinds of resources. In Japan however, Anime are commonly produced by a consortium which from the beginning includes all key players in the later stages of the value chain: the publisher, the broadcaster, media companies, advertisers, sponsors as well as the authors. The resources and expertise of each contributor are therefore bundled and coordinated. As a result, coordinated roll-outs which are usually the prerogative of large multimedia companies are not only possible but commonplace in Japan.

The cross- media adaptations are valuable for Manga because it simultaneously targets low-value and high value customers, facilitating the growth of a more solid fan base. In principal, any adaptation generates revenue through the licensing fees. However, their role is not limited to this. For example, Anime generally reach a wider audience than the Manga

²⁴ This usually happens within the first 2 years from the Manga's debut but become more likely the longer a series runs. (Davis, 2016, 212)

and as a result, the Anime can act as an advertisement for the Manga, especially in the case of children (Schodt, 1996, 339). The role of Anime especially is therefore not only to earn money as such but also to expand the Manga's popularity. In this sense, the Anime targets low-value customers in a way akin to the Manga magazines. Similarly, video games target high-value fans in addition to the owners of a console in general. In this sense, fandom feeds the game's success but also re-enforces it as a new section of customers comes into contact with the Manga.²⁵ Therefore, media adaptations strengthen the Manga's fan base, expanding the pool of high value customers while at the same time generating significant revenues in their own right.

Each product involved here, for example Anime and video games sets off its own exploitation cycle and therefore business model. The core value remains with the Manga and in particular the characters: it is the Manga which keeps all the different strands together and is at the source of all efforts. The Manga is therefore the point of origin for a whole series of different business models and windowing strategies. As a result, all licensing efforts protect the underlying brand, the potential licensee has to prove his trustworthiness (Davis, 2016, 186 and 212 and 223).

Adaptations and copyright law

Cross-media licensing as described above requires two restraints to work effectively. First, the Manga right holder needs to be in control of who can offer a product. This is only way he can charge third parties a licensing fee for the privilege to use the Manga as source material and to protect it as a brand. Copyright law effectively prevents a third party from making an adaptation of the Manga without permission.²⁶ In principle, making an Anime or

²⁵ Many success games have created fandoms of their own, see for example Pokémon and Zelda.

²⁶ It should be noted here that the unauthorised product needs to be copyright-able in its own right to qualify. The practical relevance of this is limited though: most if not all products designed to compete with licensed material will show a certain degree of sophistication and therefore be sufficient for copyright protection under Japanese law (Kato, 2013, 216).

any other derivative work such as a novel requires permission from the copyright holder (Japanese Copyright Act, art. 27). This exclusive adaptation right is broad and also includes using components of an existing work in another creative work (Japanese Copyright Act, art. 2(1)(11)).²⁷ In practice, using a Manga's characters to tell a story would fall under this right. As a result, the right holder controls who makes an adaptation and can charge for the privilege.

Secondly, timing is the key to cross-media exploitation to ensure the different products re-enforce each other as much as possible. Therefore, control over when and how other players' bring their products to the market ensures the model's maximum effect. Under the Japanese copyright law, both the right holder of the underlying work (the Manga) and the right holder of the derivative work (for example the Anime) have to give permission when a derivative work is used in a copyright relevant way, including screening it or selling copies (Kato, 2013, 2016). Most notably, this principle always applies and can pile up the required permissions. For example, selling a novel based on an Anime which is itself based on a Manga requires the permission of the Anime, Manga and the novel (Kato, 2013, 2016). In other words, it is not sufficient to only get permission under article 27 to make a derivative work because it does not include any authority to exploit the work in any copyright relevant way (Kato, 2013, 216-217). The Manga copyright owner has de-facto control over the whole chain of exploitation, including when products enter the market.²⁸

Merchandise: Monetising Fandom

Finally, merchandise monetises the fandom created by the Manga and other adaptations through licensing revenue. In this context, it should be noted that the direct link between the Manga and its derivatives reinforces the marketing potential. Mangaka have a

²⁷ The core consideration here is the internal form of the work: the expression can be found in a combination of the storyline, structure and the main components (Kato, 2013, 213- 2014).

²⁸ This legal context does not differ from the EU and US as both provide for adaptation rights and permissions for commercial use of derivative works.

stronger ability to market products because they have a personal fan-base which allows them to drive merchandising (Davis, 2016, 183). Merchandise has its eyes set on fans as high value customers who are willing to pay a premium for their favourite character's image (Mehra, 2003, 205). However, high value customers are addressed differently based on their willingness to spend money. On one hand, merchandise targets the general fans with character goods used in everyday life, for example lunch boxes and toys. Items here cost more than comparable non-branded ones but the overall price remains affordable. The aim is to sell as many items as possible, reducing the profit margin for the individual item. On the other hand, some items are aimed at the core fans and collectors. These items are attractive because they have a sense of exclusivity, for example limited editions, and therefore command higher prices than the merchandise aimed at mass distribution. For these limited, high quality editions, fewer items are sold but the profit margins are significantly larger. In other words, they are targeted at the most dedicated fans who also constitute the highest value customers, willing to spend more money than other consumer groups. This setup is essentially the same as in the EU or US.

In difference to adaptations though, the legal protection of merchandise is complex. First, merchandise products such as toys or lunch boxes are not copyright works in their own right and therefore are not subject to either the adaptation right (Japanese Copyright Act, art. 26) or the permission requirement (Japanese Copyright Act, art. 27). Indeed, there is no individual right which gives the copyright holder control over making merchandise as such. Instead, the Manga copyright holders control merchandise using the copyright protection of the Manga's characters rather than the Manga as such. Japanese copyright law protects cartoon and comic characters as art works (K.K. Matsudera v King Features, 1992). As a result, using the characters as images in merchandising is essentially a reproduction of the art

work and therefore subject to copyright. It is this copyright-relevant use which allows the Manga copyright holder to charge money in return for permission.

Steinberg (2012, 192- 193) has pointed out why this protection is significantly weaker than adaptations covered by the derivative work rules outlined above. First, character designs exist in different versions and change over time. For example, the character looks differently in an Anime compared to the Manga. Furthermore, merchandise is essentially a 3D product but characters are 2D. While copyright does not preclude control over these changes, it is a rather new trend in Japanese copyright law and not as established as more traditional artistic uses are. Furthermore, the protection based on characters as art works does not extend to the merchandising product as such. As a result, copyright can be insufficient.

Right holders have responded to these gaps by drawing on a patchwork of different rules depending on the context. While copyright does not focus on 3D items, these products can be protected using design law. However, design law is limited in the scope of protection it provides. In this context, only the specific design as registered in via its blueprints is protected and the design is only protected as part of the product (Steinberg, 2012, 193). Therefore, design law protection is narrower than copyright: it prevents direct copying but not much more. In addition, other mechanisms are also available such as unfair competition law to combat unauthorised competing products. However, none of these options provides direct protection for the product as such. As a result, their applicability and effectiveness is context- dependant.

While the protection of merchandise is significantly weaker than the protection provided for adaptations, the impact is minor in practice. There have been calls for a merchandising right under copyright law (Steinberg, 2012, 193), but the market in character goods is vibrant and booming without it. Most notably, it is interesting in this context that

this lack of wholesome, coherent protection is not actually seen as a problem. For example, there are no legislative initiatives in this respect. In other words, one of the business model's core revenue components is not only partially supported by copyright law and other legal mechanisms but functions well.

Conclusion

In summary, for a successful Manga, a significant proportion of the revenue is not dependent on publishing but instead relies on cross- media exploitation. Manga characters easily travel across different media forms such as Anime, video games and merchandise. This kind of business model works best when it is highly coordinated but this requires extensive expertise and resources that usually only large multimedia companies can bring to the table and only do so in the context of major releases. The Japanese entertainment sector has developed its own coordination mechanism in the form of Anime production committees which bundles the necessary expertise and resources from smaller players. As a result, the Manga enters the market in several different forms in a time-coordinated manner with the different components re-enforcing each other: all of them are able to create and strengthen the feeling of fandom among the customers. Merchandise then monetises this fandom, charging a surplus for images of the much-loved characters on every item or collectible. For the Manga right holder, the advantages of this model are twofold. First, there are the licensing fees that they receive for every product. Secondly, the media adaptations in particular act like advertisement for the Manga itself and adaptations, increasing their popularity and therefore sales potential.

Overall, copyright is crucial to the cross- media use of Mangas but the overall coverage it provides differs. For traditional derivative works that use the characters and the storyline to create an independent copyright- protected work, copyright protection provides an all-encompassing umbrella that ensures the Manga right holder controls all aspects. First,

making a derivative work requires permission and so only the licensee can bring the product to market. Secondly, since the Manga right holder's permission is also required for the exploitation of the derivative work, he controls the timing as well. However, copyright protection is thinner for merchandise because here it is only based on the use of characters as images, not the product as such. As a result, right holders need to supplement copyright protection with other legal devices to achieve a similar effect to copyright law. Nonetheless, the weaker protection does not seem to have impacted the market and its development in a negative way.

Copyright control is absolutely crucial for the business model and there is nothing to suggest that copyright control is less important in Japan than it is in the US or EU. Indeed, the publishers or more specifically the publisher's multi-media departments are now the central point of all licensing efforts, acting like a literary agent representing the interests of their client (the Mangaka) (Brienza, 2016, 86; Denison, 2016, 73). On one hand, they coordinate the roll-out and therefore are the ones with overall control. On the other hand, their central role in cross-media coordination also spills into other areas. For example, Manga has become more central as source material since publishers entered the Anime production teams more directly (Denison, 2016, 72). Most notably, since the publisher only represents the author, adding another layer of consent and therefore complexity is added to the decision-making structures. As a result, the business model cannot explain why Mangaka keep their copyright in Japan, given that the publishers go to great lengths to manage the rights even if they do not own them. The discussion will therefore now turn to the copyright law's ownership rules itself in search of an answer.

Japanese Copyright Law and the Ownership of Works

The previous section has demonstrated how Manga are monetised and clarified that copyright is central to it. It concluded that although the individual steps and components differ from the US/ EU windowing strategy, the Manga business model relies as much on copyright control as the Western comic business models do. Furthermore, it clarified that the publisher is at the core of the model even though he is not the copyright owner. As a result, differences in the monetisation of Manga compared to Western comics cannot explain why Mangaka keep their copyright while EU/ US comic publishers seek full control over all rights. This section will now examine the copyright ownership provisions, focusing on if the law prevents publishers from acquiring the rights given the particular way Manga are produced and monetised.

Copyright Ownership by Law: between unattractive and unwanted options

In the US, comics are produced with a long- term view. The publishers control the comic production with a stable set of artists, letterers, inkers and scenario writers (Schodt, 1996, 31). In these arrangements, comics are drawn by the artist under work-for-hire agreements (Davis, 2016, 180). These usually involve a one-off payment, including an advance and further payments once sections of the work are complete (Davis, 2016, 309-326). Most notably, work for hire agreements under US copyright law gives all the copyright to the publisher (US Copyright Law, s. 101).

The Japanese production setup is more short-lived than this. Manga magazines have developed an elaborate feedback system to trace popularity: each magazine copy contains a postcard in the back where fans can select their favourite and more importantly least favourite series contained in the magazine (Schodt, 1996, 105). The Internet has expanded this process, providing even more proximity (Freedman, 2016, 39). As Condry (2003, 108) points out, fans

use this opportunity as for example the publisher Shogakukan gets between 3,000 to 4,000 responses a week.

The feedback provided is highly significant because only maintaining high ratings guarantees continued publication. Given the low profit margins of magazines and that a series may be cancelled at any point in time, it also provides a powerful incentive to limit upfront investments and therefore sunk costs. As a result, instead of buying for example several chapters of a series at once, Manga are paid for by page with prices ranging for a debut author between 4,000-7,000 Yen while popular authors earn about 20,000- 35,000 Yen per page (Manga Information Office, 2017). Most notably, once the publication stops, so do payments (Manga Information Office, 2017). While Japanese Mangaka are paid in a similar way, there is no equivalent work-for-hire doctrine in the Japanese Copyright Act. As a result, the payments per page have no influence on copyright ownership. Copyright transfers on a piece-meal basis are also unattractive because as the Manga becomes more popular, the price per page would naturally rise and vice versa. This would make financial planning difficult and penalise success.

As another option, a publisher can acquire the copyright if he employs the Mangaka (Japanese Copyright Act, art. 15). However, high pay-roll costs make this highly unattractive for the publisher because of the short-term nature of Mangas and especially the constant threat of cancellation. Furthermore, for the employment provisions to take effect, several conditions have to be met. Most relevant here, the work has to be published under the employer's name. As Kato (2013, 147) points out, this means that the actual author cannot be named. It is this requirement which makes employment of Mangaka by publishers not viable. Mangaka have a reputation and fan-base of their own: works are always published with their name on the work according to industry practice. Employment of the Mangaka as a route for

corporate copyright ownership is therefore neither attractive nor effective in the Manga context. Instead, Mangaka are usually freelancers (Motivist Japan, 2015).

However, the business model does open up another avenue to have copyright control: joint ownership through creative contributions. In principle, if a work has more than one author, then all of these share the rights in the work. This is called joint ownership and all decisions on the work have to be agreed between all of the authors (Japanese Copyright Act, art 65- especially art. 65(2)). Therefore, if someone employed by the publisher is a co-author of the work and is not individually named on the work, their share of the copyright would go to the publisher, making the corporation the joint copyright owner. There are two groups that are relevant in this context: assistants and editors.

Mangaka do not draw the Manga on their own due to deadline pressures. As mentioned above, Manga originate as serial publications where a new issue is published in set intervals, often weekly or bi-weekly. This means that a Mangaka publishing his work in a weekly magazine has to produce ~20 pages each week. Although modern technologies have increased the production speed (Manga Information Office, 2018), deadline pressure remains the core defining feature of the industry. The industry has adapted to this situation in a way unknown in the US or EU (Davis, 2016, 64): Mangaka, especially successful ones, work as part of studio. Here, the Mangaka focuses on the story and drawings while a number of assistants work on backgrounds, shading, lettering, inking etc (Motivist Japan, 2015). The result is a specialisation where one assistant only does backgrounds or one specific character (Davis, 2016, 64).

While the division and specialisation of tasks allows for a faster production of the Manga, it can also affect the copyright ownership. To be considered joint authors, the works need to be the result of a shared creative effort and the contributions are inseparable

(Japanese Copyright Act, art. 2(1)(12)). In practice, the assistants' contributions would be considered inseparable in the sense of the law because the Manga would be fundamentally different without their contributions, especially without their drawings. However, the issue is with the shared created effort. If the assistants only follow the Mangaka's instructions, then they are only executing his creative vision. As a result, it is not a shared creative effort in the sense copyright law envisages it. To what extent assistants actually contribute creatively is not clear at this point in time but their subservience is definitely presumed in the industry: only the Mangaka is considered the creator (Davis, 2016, 64). This assessment however is based at least as much on industry culture as it is based on copyright law.

A second key adaptation to the constant deadline pressure is the role of the editor who is more active in Japan. Manga editors have a major role in the series planning and execution, including supplying ideas, shepherding the artist and occasionally they even help to write the stories (Schodt, 1996, 69). It is this last part that is important from a copyright point of view: it has been pointed out that editors work closely with Mangaka and indeed can have significant creative influence (Brienza, 2016, 45). As a result, editors could pass the joint ownership test of shared creative effort and inseparable contributions, especially if their influence is on the storyline and/ or character design. Nonetheless, editors are in practice never considered co-authors in Japan. Instead, the situation is interpreted as the Mangaka being in control at all times (Davis, 2016, 181). However, this assessment is not based on copyright but on industry practice. Under copyright law, at least some editors and therefore their employers, the publishers, would have a viable claim to co-authorship and therefore a share of control over the Manga's copyright.

In summary therefore, the law opens up the possibility of joint authorship, it is industry practice and shared norms which prevent this. As a result, despite the number of people involved in creating a Manga, both technically and creatively, authorship and with it

the copyright remains focused on the Mangaka himself. In other words, having the Mangaka as the sole author is a choice and not dictated by the law. Since neither work-for-hire nor employment nor transfers are viable routes to acquire the copyright in a Manga and joint ownership or copyright transfers are not chosen, the publisher remains without control over the copyright.

The lack of copyright transfer has major repercussions under Japanese copyright law that even an exclusive license cannot remedy. Under Japanese law, only the right holder can enforce the exclusive right against an infringing third party because only he has legal standing in the courts (Kato, 2013, 518). As a result, the publisher cannot bring an infringement lawsuit without the direct involvement of the Mangaka if he is only a licensee. However, it is clear from the different enforcement actions reported in the press that publishers are bringing law suits despite not owning the relevant exclusive rights.²⁹ This section will show that the answer to this apparent contradiction is that there is another copyright option for the magazine stage of the Manga business model not available in the US or EU: the Japanese publication right (Japanese Copyright Act, chapter 3).

An Alternative to Copyright Ownership or Licenses: the Role of the Publication Right

The publication right is derivative of the reproduction right and permits its owner to publish a work, covering the reproduction of the work and then selling it to the public (Japanese Copyright Act, art. 79-80). It is not a property transfer though like copyright assignments are. The publication right permits neither re-printing as a collection nor can it be transferred without the consent of reproduction right holder's consent, here the Mangaka (Japanese Copyright Act, art. 80(3), 87). The main benefit of this path over simply licensing the work for publication is that both the reproduction and the publication right holder have

²⁹ For an industry overview on infringement action, see especially Association of Copyright for Computer Software (2018).

legal standing in court.³⁰ This means that even without getting the exclusive copyright as such, the owner of the publication right can still enforce his copyright independently of the copyright owner, here the Mangaka. In addition, the limited scope of the right makes it cheaper to acquire than a copyright transfer (Landes and Posner, 2003). It permits the publisher to try out a lot of different series at the lowest price reasonably possible. Finally, none of the publication right's restrictions actually negatively affects the publisher's business model for Manga magazines.

The publication right's limited nature does not interfere with the Manga magazine business model as a trial platform for success. First, the publication right is restricted to the first publication of the work: it does not extend to collections or indeed any kind of derivative works. The business model does not include collections and adaptations until a much later point, a stage most Mangas never reach. After all, the origin and most competitive section is the magazine market and all considerations focus on this part. Secondly, the publication right is conditional on a duty to publish in a timely manner. This includes actually bringing to work to the market (usually within 6 months of receiving the manuscript) as well as a duty to keep it in print, subject to common or industry practice (articles 81(1)-(2); Kato, 2013, 527-528). Both of these align closely with the magazine business model that aims at speedy delivery only printing material once in a magazine. As a result, this requirement imposes no additional cost on the Manga publisher. Thirdly, the default term of protection is only three years (although it can be longer depending on the contractual arrangements) (Japanese Copyright Act, art. 83). Nonetheless, the popularity of most Manga is short-lived, not exceeding a couple of years, making long-term protection of the material under copyright a minor issue in general (Schendle, 2016, 651). In addition, the publication right is relevant for

³⁰ This is subject to registration (Japanese Copyright Act, art. 88).

the magazine publication stage and here a three year term is more than adequate to publish the work in a magazine.

However, the publication right's real cost is that once a Manga is successful, the Mangaka has little incentive to sell his exclusive rights- after all, the value of the property is now proven, raising the price the Mangaka can charge for them. In this sense, the Mangaka of a successful Manga has the same rise in negotiating strength as a successful author of a novel does. While the novelist can only negotiate better terms for later works, the Mangaka gets this option from the first success already.³¹ In other words, the publisher has to negotiate with an author who now knows what his work is worth. The Mangaka therefore has little incentive to assign rights now and especially not to do so cheaply.

In summary, the highly competitive Manga magazine environment with its focus on identifying valuable series in combination with the publication right provides one explanation for why Japanese Mangaka keep their copyright. Most Manga series are not successful enough to be reprinted as collections, not to mention the cross-media and large-scale licensing. Therefore, there is a strong incentive to limit the money spent on a series until its potential is clear. This makes the publication right so attractive for publishers. Its limitations make it cheaper to acquire but the restrictions permit the magazine part of the business model to work in much the same way as actual copyright ownership would. However, once a series is popular, the proven value of the work reduces the incentive of the Mangaka to transfer his rights, preventing the publisher from buying them outright.

In theory, this setup can create major issues especially if a Mangaka as the copyright owner for one reason or another stops a project. The costs would be immense for all the

³¹ The weakness of authors is recognised in many copyright (contract) laws which have so-called 'superstar clauses'. Under these provisions, authors are entitled to additional royalties if a work's success exceeds the payments to the author to such an extent that it is considered unfair. For a stereotypical example, see the Dutch Copyright Act [art. 25d].

market actors involved and this uncertainty should theoretically pose a major barrier to investment. However, this is not evident in Japan as the Manga market is flourishing in all its incarnations, ranging from Anime to videogames to merchandise. This raises the questions if there is something else hidden in the business arrangements which explains why Mangaka are not a source of uncertainty, or at least not enough to threaten investment?

Control over the Author, not the Copyright

The Mangaka is not as powerful in practice as his status as copyright holder would suggest. One indicator for this is the income a Mangaka earns from spin-offs. In theory, at the moment an Anime or other spin-offs are made, the Mangaka should be in a strong bargaining position because their Manga has proven itself a success in a highly competitive market. Therefore, he should be able to generate significant revenue streams. However, this is not the case in practice. For example, each Anime episode generates only 10,000-15,000 Yen (~\$100-120) for the author while each sold game brings a royalty of around 3% (Manga Information Office, 2018, 2017). Indeed, only very few Mangaka become wealthy (Motivist Japan, 2015). Even for the large magazines, the odds are not favourable (Schodt, 1996, 70). The fact that the comparatively strong bargaining position does not translate into higher earnings is surprising. It also indicates that it is worth looking for factors which may limit how the Mangaka positions himself in the market.

Brienza (2016, 44-45) points out that the freedom of authors to actually make decisions can be circumscribed and does vary extensively between the different authors. This section will show that the second answer to why copyrights are not assigned in the Manga context lies in the unique social control that the Manga business model affords the publisher. The very particular way in which the Manga creation and monetisation works in Japan provides the publisher, mainly in the form of the editor, other ways to exercise control:

instead of controlling the copyright work as such, they manage the author and therefore influence the right holder.

The first aspect of publisher control over the author is based on the publisher's central role in the market. In particular, there is no alternative to them if the aim is to achieve commercial success. In principle, there are 4 routes to enter the professional Manga market (Manga Information Office, 2018). First and most commonly, aspiring Mangaka participate in publisher-hosted competitions. The winners are then given the opportunity to publish their work in one of the serial magazines. Secondly, an artist can gain experience and in a sense on the job training by becoming an assistant to an already established Mangaka. Most notably, this also involves applying to the publisher because assistants are employed by them, not the Mangaka. Thirdly, there are now universities and colleges offering courses on Manga, Anime and other related fields. Here, the reasoning is to get practical training as well as benefit from the institutional reputation and network to gain the attention of a publisher. Finally, aspiring artists can be noticed by producing and self-publishing their work as Doujinshi (fan comics). There are different homepages commonly used for this, such as Lulu.com, and large scale events such as the bi-annual Comiket. It is known that publishers actively scan these events and homepages and indeed highly successful groups such as CLAMP came from this route (Ichikohji and Katsumata, 2016, 92). However, irrespective of what route is taken, the final aim is always to be contracted by a publisher for serial publication: they are the starting point for any commercially successful Manga. This crucial gatekeeper position translates into power.

Secondly, the influence of authors is limited by their vulnerability in a competitive market. The feedback system described above ensures that even artists already published continue to feel the pressure because any series can be cancelled at any time and indeed this happens regularly (Davis, 2016, 177; Manga Information Office, 2017). The close-nit

feedback system also means that a bad quality Manga cannot be turned into success in the same way that strategic advertisement and reviews can do this for music, literature or films (Condry, 2013, 107). In other words, if a series is of substandard quality, even famous Mangaka will be faced with cancellation. At the same time, there is a vast pool of both professional and semi- professional artists that seek a spot in the magazine (Condry, 2013, 108). Not only has the number of Mangaka including amateurs has increased over time (Mehra, 2003, 226), the barriers of entry are low as the cost of production includes little less than materials and persistence- indeed, one does not even have to be an exceptional artist (Schodt, 1996, 29). In other words, the publisher successfully keeps the pressure on the Mangaka because there is no inherent job security associated with getting published. This pattern gives the publisher an elevated negotiation position vis-à-vis the Mangaka and therefore power.

Thirdly, publishers in the form of the editors consciously build a close relationship with the Mangaka. When a Mangaka is signed on, each one gets an editor who takes charge of developing the story into a serialised final product or more stand-alone stories in close collaboration with the Mangaka (Manga Information Office, 2018; Lano, 2017). The relationship is usually long-term, unless the editor retires, gets re-assigned or leaves for some other reason. Indeed, editors serve a whole range of roles in practice due to the constant deadline pressure. This includes anything to get the Manga done, including famously cooking (Davis, 2016, 166). To the same end, it is common practice to keep Mangaka sequestered for all intents and purposes to ensure they focus on their work (170). This puts the editor into a key position both as a person of trust and as a gatekeeper: editors have to pass on the licensing offer and if it is not deemed worthy, the editor will not do so (179). Therefore, although the publisher does not legally control the copyright work, the close relationship between the publisher (in the person of the editor) and the author substitutes for some of this.

4.3.1 Conclusion

In summary, it is the central role of the publisher in the Manga business model, the continuous pressure on the Mangaka to deliver popular content as well as the conscious nourishing of the editor- Mangaka relationship that give the publisher influence over the Mangaka. In the end, the Mangaka owns the copyright in his work and needs to approve all aspects of its monetisation. However, to reduce the burden on the Mangaka and ensure the publisher's wishes are taken care of, the practical rights management is done by the publisher as the Mangaka's representative. This gatekeeper position in combination with the editor's personal influence minimises the management burden on the Mangaka while it elevates the publisher's position. The Mangaka is therefore a lot more passive than his copyright ownership would suggest on paper. In line with his lack of initiative, the comparatively low income in the context of his strong bargaining position looks less surprising.

Conclusion

This article addressed the question why Japanese Mangaka keep their copyright despite the large scale commercial exploitation of their works. In doing so, it first examined if the business model used to monetise Manga may not be as copyright-reliant as the ones known in the US or EU are. The findings show that while the business models do indeed vary significantly, the differences are not related to copyright law. The key difference to its Western equivalents lies in the order it targets consumers moving from low- to middle-value customers to high-value customers first and then oscillating between them once the spin-off stage is reached. However, the Japanese Manga business model is still a windowing strategy which relies on exclusivity in terms of bringing a work to the market, controlling its distribution and the making and use of spin-offs. Not owning the copyright has major repercussions in terms of enforcing one's rights against infringers because the licensee does

not have independent standing in court. In addition, the large number of different actors involved in the roll-outs theoretically should make corporate ownership an even more trusted option by all actors. This means that there is nothing in the business model as a whole which negates the benefits of copyright ownership and especially ex-ante assignment thereof from the Mangaka to the publisher.

However, the business model creates side effects not present in the US or EU. In particular, all Manga have to prove themselves in the Manga magazine environment first where the profit margins are low and competition fierce. As a result, there is a constant pressure to keep the costs low while the established feedback system exerts a continuous fear of cancellation. On one hand, this excludes the more expensive option to acquire the copyright upfront because it increases the sunk costs per series in an environment where copyright ownership never develops commercial relevance in most cases. At the same time, copyright law and industry culture prevent a transfer of rights, such as under the employment rules (too restrictive) and joint ownership (culturally unacceptable) while a US-style work for hire provision does not exist. On the other hand, the Japanese publication right provides a cheaper option than transfers but still ensures the magazine publication proceeds smoothly without full copyright ownership as such. In other words, the publication right provides sufficient coverage, including the ability to directly enforce ones rights, until the true value of a Manga property is known.

This leaves the problem of monetisation once the Manga is successful. At this point, a full copyright transfer is unsuitable because it would be expensive: both the Mangaka and the publisher know that the rights are valuable. Since the Mangaka owns the copyright, he has to consent to all spin-offs made from his work. This is both demanding in terms of expertise and time given the large scale roll-out of products into different sectors. All of this raises the threat that the Mangaka may, for one reason or another, refuse his permission, potentially

costing partners significant amounts of money. This is not common and indeed the Mangaka's earnings from spin-offs are more limited than his central copyright role would suggest. It is argued here that this can be explained by the role of the publisher. The publisher acts as the gatekeeper and de-facto rights manager based on his central role in publishing Mangas, his ability to maintain constant competitive pressure on the Mangaka as well his close working relationship with the Mangaka. In other words, it is the combination of competitive pressure, social control and the particular suitability of the publication right which ensures that the business model works even without ex-ante copyright assignment. As a result, the actual autonomy of the Mangaka varies and can be just as limited as it would be if he had assigned the rights before publication.

On a final note, the lessons from the Japanese model for the US and EU are not straight forward. On one hand, it shows that commercial exploitation can be viable even if the commercial intermediary does not control the copyright. On the other hand, it is not like the publisher has abandoned control as such. The Japanese Mangaka may be the copyright owner but his actual influence depends on the context, a setting which inherently favours the publisher. Furthermore, the Japanese business setup and copyright law provide the publisher with tools to exert profound indirect control. These are not available in the US or EU. It is therefore highly doubtful if the Japanese model could be emulated there.

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